

**STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**  
**ADVISORY COMMITTEE ON JUDICIAL ETHICS**

**DOCKET NUMBER:** 2004-ACJE-01

**DATE ISSUED:** February 3, 2004

**QUESTION AND FACTS PRESENTED:**

The Chief Justice of the New Hampshire Supreme Court, John T. Broderick, Jr., has inquired of the Committee as to whether the Code of Judicial Conduct prohibits his attendance at an upcoming retirement testimonial dinner in honor of Walter L. Murphy, who recently retired as Chief Justice of the New Hampshire Superior Court. The dinner is sponsored by colleagues, friends and family of Judge Murphy, and invitations have been extended to all interested persons, including the entire bench and bar. Attendees must purchase tickets (\$35.00 each) to cover the cost of dinner as well as a gift.

The question presented stems from the fact that there is pending litigation concerning Justice Broderick's recent assumption of the position of Chief Justice, which he will hold for five years. Pursuant to statute, Justice Broderick became Chief Justice on January 1, 2004, by operation of law, upon the retirement of Chief Justice David A. Brock effective December 31, 2003. The Governor and Executive Council of the State of New Hampshire have filed suit in the New Hampshire Supreme Court challenging the constitutionality of the statute under which Chief Justice Broderick assumed the position. Chief Justice Broderick is a named respondent in the suit. Judge Murphy has been designated as one of the substitute Supreme Court panelists to hear and decide the case.

**DISCUSSION AND APPLICATION OF CODE OF CONDUCT:**

This inquiry implicates Canon 2 of the Code of Conduct, which provides, "A judge should avoid impropriety and the appearance of impropriety in all of the judge's activities." Critical here is Canon 2(A) which mandates, in part, that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The commentary under this section further explains that "[t]he test for appearance of impropriety is whether the conduct would create in the mind of a reasonable, disinterested person fully informed of the facts a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is

impaired.” Further, Canon 2(B) provides, in part, “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”

It might reasonably be argued that Chief Justice Broderick’s attendance at Judge Murphy’s testimonial is simply appropriate and warranted acknowledgement of Judge Murphy’s long service to the people of New Hampshire. Invitations have been extended to the entire bench and bar, and it appears that the relatively modest ticket price reflects the actual cost for dinner, with a small portion to be allocated for a gift. However, the fact remains that Judge Murphy will participate in deciding a case involving Chief Justice Broderick, the highest ranking judicial officer in the State of New Hampshire. Notwithstanding any subjective desire by Chief Justice Broderick to pay appropriate respect to Judge Murphy, his attendance at the testimonial could create the appearance of impropriety. A disinterested person could reasonably question whether Judge Murphy’s decision in the litigation might be influenced in some way by Judge Broderick’s attendance. Under these circumstances, where Judge Murphy is not in a position to determine or control who will be attending the testimonial, it is left to Chief Justice Broderick to protect against any erosion of public confidence in the integrity and impartiality of the judiciary.

#### **ADVISORY OPINION ON THE QUESTION PRESENTED:**

It is the Committee’s opinion that the Code of Judicial Conduct prohibits the attendance of Chief Justice Broderick at the testimonial for Judge Murphy.

The Committee notes that because of the nature of the inquiry, disclosure of the identity of the inquiring judge is necessary and is made with the knowledge and consent of the judge.

**THIS ADVISORY OPINION IS ISSUED BY UNANIMOUS CONCURRENCE OF ALL COMMITTEE MEMBERS.**

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Carol Ann Conboy, Chair

#### **CAUTIONARY STATEMENT**

This opinion is advisory only and not binding on the judicial conduct committee, which may, in its discretion, consider compliance with an advisory opinion by the requesting individual as a good faith effort to comply with the Code of Judicial Conduct. Rule 38-A(4)(c).